

MT LEGISLATIVE HISTORY

Chapter 265 19 91

Bill H 920 S _____

Original bill & hist. C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) Feb 21 ☒ C

Hearing Date(s) Mar 13 ☒ C

Feb 22 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

Date Out Feb 22 ☒ C

Mar 13 ☒ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

HOUSE FINAL STATUS

HB 920

4/17 SIGNED BY PRESIDENT
 4/17 TRANSMITTED TO GOVERNOR
 4/22 SIGNED BY GOVERNOR
 CHAPTER NUMBER 544

EFFECTIVE DATE: 7/01/91

HB 918 INTRODUCED BY SOUTHWORTH

REVISE DEFINITION OF SOLID WASTE TO MAKE
 CONSISTENT WITH RELATED STATUTE

BY REQUEST OF HOUSE NATURAL RESOURCES COMMITTEE

2/18	INTRODUCED		
2/18	REFERRED TO NATURAL RESOURCES		
2/18	FIRST READING		
2/20	HEARING		
2/21	COMMITTEE REPORT—BILL PASSED		
2/23	2ND READING PASSED	88	9
2/26	3RD READING PASSED	89	10

	TRANSMITTED TO SENATE		
2/27	FIRST READING		
2/27	REFERRED TO NATURAL RESOURCES		
3/13	HEARING		
3/14	COMMITTEE REPORT—BILL CONCURRED		
3/16	2ND READING CONCURRED	49	0
3/18	3RD READING CONCURRED	44	5

RETURNED TO HOUSE
 3/23 SIGNED BY SPEAKER
 3/25 SIGNED BY PRESIDENT
 3/25 TRANSMITTED TO GOVERNOR
 3/27 SIGNED BY GOVERNOR
 CHAPTER NUMBER 213

EFFECTIVE DATE: 10/01/91

HB 919 INTRODUCED BY PETERSON

GAMBLING LICENSES AND PERMITS REVISIONS
 BY REQUEST OF DEPARTMENT OF JUSTICE

2/18 INTRODUCED
 2/18 REFERRED TO TAXATION
 2/18 FIRST READING
 2/18 FISCAL NOTE REQUESTED
 2/23 FISCAL NOTE PRINTED
 2/23 FISCAL NOTE RECEIVED
 3/20 HEARING
 3/27 TABLED IN COMMITTEE

HB 920 INTRODUCED BY DARKO, ET AL.

REVISE PATERNITY STATUTE OF LIMITATIONS
 BY REQUEST OF DEPARTMENT OF SOCIAL
 AND REHABILITATION SERVICES

2/18	INTRODUCED		
2/18	REFERRED TO JUDICIARY		
2/18	FIRST READING		
2/18	FISCAL NOTE REQUESTED		
2/21	HEARING		
2/22	COMMITTEE REPORT—BILL PASSED		
2/23	FISCAL NOTE RECEIVED		
2/25	FISCAL NOTE PRINTED		
2/25	2ND READING PASSED	95	1
2/26	3RD READING PASSED	96	2
	TRANSMITTED TO SENATE		
2/26	FIRST READING		
2/26	REFERRED TO JUDICIARY		
3/13	HEARING		

HB 921

HOUSE FINAL STATUS

3/13	COMMITTEE REPORT—BILL CONCURRED		
3/16	2ND READING CONCURRED	49	0
3/18	3RD READING CONCURRED	49	0
RETURNED TO HOUSE			
3/23	SIGNED BY SPEAKER		
3/25	SIGNED BY PRESIDENT		
3/25	TRANSMITTED TO GOVERNOR		
3/29	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 265		
		EFFECTIVE DATE: 3/29/91	

HB 921 INTRODUCED BY DARKO, ET AL.
 REQUIRING PARENTAL SOCIAL SECURITY NUMBERS
 ON BIRTH REGISTRATION FORMS
 BY REQUEST OF DEPARTMENT OF SOCIAL
 AND REHABILITATION SERVICES

2/18 INTRODUCED
 2/18 REFERRED TO HUMAN SERVICES & AGING
 2/18 FIRST READING
 2/19 REREFERRED TO JUDICIARY
 2/21 HEARING
 2/22 TABLED IN COMMITTEE

HB 922 INTRODUCED BY DARKO, ET AL.
 ADMINISTRATIVE MODIFICATION OF CHILD SUPPORT ORDERS
 BY REQUEST OF DEPARTMENT OF SOCIAL
 AND REHABILITATION SERVICES

2/18	INTRODUCED		
2/18	REFERRED TO JUDICIARY		
2/18	FIRST READING		
2/18	FISCAL NOTE REQUESTED		
2/21	HEARING		
2/22	COMMITTEE REPORT—BILL PASSED		
2/23	FISCAL NOTE RECEIVED		
2/25	FISCAL NOTE PRINTED		
2/25	2ND READING PASSED	69	29
2/26	3RD READING PASSED	65	34
TRANSMITTED TO SENATE			
2/26	FIRST READING		
2/26	REFERRED TO JUDICIARY		
3/13	HEARING		
3/13	COMMITTEE REPORT—BILL CONCURRED		
3/16	2ND READING CONCURRED	49	0
3/18	3RD READING CONCURRED	49	0
RETURNED TO HOUSE			
3/22	SIGNED BY SPEAKER		
3/23	SIGNED BY PRESIDENT		
3/25	TRANSMITTED TO GOVERNOR		
3/29	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 266		
		EFFECTIVE DATE: 10/01/91	

HB 923 INTRODUCED BY DARKO, ET AL.
 AUTOMATIC INCOME WITHHOLDING FOR CHILD SUPPORT
 BY REQUEST OF DEPARTMENT OF SOCIAL
 AND REHABILITATION SERVICES

2/18 INTRODUCED
 2/18 REFERRED TO TAXATION
 2/18 FIRST READING
 2/18 FISCAL NOTE REQUESTED
 2/19 REREFERRED TO JUDICIARY
 2/21 HEARING

REP. KELLER said if the state suggested two alternate sites, it still would require five metal leases.

REP. LEE asked if the amendment restore most of the stricken language in the Bill. REP. WHALEN said in all instances eminent domain could be used. Its use is conditional upon it being used to affect the environmental protection goals articulated in a properly prepared EIS.

REP. DARKO said she has relatives in Pony who didn't think the mill siting there was going to do much environmental damage. The potential endangerment of their water source is a concern. She doesn't know if things would have been better in that siting if this legislation had been in affect at that time.

REP. NELSON gave an example of the land they owned in the Williston Basin Area. A gas company said they would use eminent domain for the land across from their house. They were compensated for the land but the effects of this have been considerable. There are gas lines, a noisy motor and sour gas filling the house. She urged passage of this Bill.

REP. R. JOHNSON said he voted for Rep. Whalen's amendment because it is helpful on this Bill, in the unlikely event that it passes. He agrees with everyone who wants to keep the state as well as possible. He thinks they need to think hard before they start chopping away at the industries. He thinks this will erode the economic base.

REP. BECKER said she tried to find out how many other states have a similar law. They don't. New Mexico does not allow eminent domain by mining companies. We don't need it because other states don't have it.

REP. WHALEN said resource taxes have been cut for the past two sessions. The entire purpose of the Coal Severance Tax was to pay for the impacts of mining. If they are going to reduce the ability to pay for the impacts of mining, they ought to address those impacts by requiring that this power, eminent domain, ought to be reserved only for those instances where it is necessary to perpetuate the environmental goals contained in a properly conducted environmental impact statement.

REP. LEE asked Rep. Becker if no other states in this area were using eminent domain. REP. BECKER said she did not have information of that. She saw the statute from New Mexico. New Mexico is a mining state.

VOTE: Motion carried 11-9. EXHIBIT 3

HEARING ON 920, 921, 922 AND 923

REP. PAULA DARKO, HD 2, Libby, said the four Bills are sponsored at the request of the Department of Child Enforcement Services

and Department of Social and Rehabilitative Services (SRS). The reasons for the Bills coming as a package are because they all deal with the same thing: that is supporting the statutes and federal regulations.

The first Bill, 920, is a revision of the paternity statute limitations. 921 requires parental social security numbers of statistical information of the birth certificate only not on the birth certificate. 923 has to do with automatic income withholding. There are some changes in order for Montana to qualify for federal reimbursement. The last Bill, 922, is the administrative procedure for modifying child support orders.

Proponents' Testimony:

John McRae, Department of SRS, Child Support Division, said the federal government requires states to have child support enforcement programs. That began in Title 4D of the Social Security Act in 1975. Since that time Title 4D has been amended on several occasions. It was again amended in 1988 by the Family Support Act as part of the Welfare Reform Package. If these Bills, as required by the federal governments, or the procedures that are required, the state's can suffer monetary sanctions. The sanction may run from one to six percent of the entire federal funding. If there is failure to perform a function that is required, there can be a sanction for noncompliance. They can also have sanctions imposed if they do not have the laws or procedures that are required by the feds for them to have.

The first Bill, HB 920, amends the statute of limitations. In 1984 amendments to the Social Security Act require the states to have the ability to establish paternity for a child at any time prior to the child's 18th birthday. While this particular statute has been amended several times it never met the federal requirements until 1987. In 1988 the Family Support Act came into play. That Act said not only must a person do that at any time, but all of the paternity cases that have been closed must be retroactively revived. That is the additional language. There is another problem in reviving paternity action is remedial. What he is concerned about is that when paternity is revived, they also potentially revive the father's liability to the state for past support they have. A retroactive revivment of a liability situation could be a conflict with Montana's State Constitution. So, in addition to reviving the paternity part of it, that the liability is not revived. That still conforms with the federal language. There has been a recent U.S. Supreme Court decision, Arizona vs. Satsias. They threw out a statute of limitations in a presumed fatherhood situation. This is not to be confused with this Bill.

HB 921 is a part of the Family Support Act that requires parents to provide social security numbers with birth records at the time they are registering the birth records. The reason that Congress has done this is that Social Security numbers are perhaps one of

the best tools that are available to the Child Support Programs for locating absent fathers and their assets. It would only be disclosed by the Bureau of Life Statistics. It can only be used for Child Support Enforcement purposes. There are sanctions to any individual who may violate that confidentiality.

HB 922 creates a new process to modify a child support order. It also requires at a three year periodic interval that every case they have be examined for possible modification. In this instance for carrying this out, was left to the state. The problem is that modification must be done in the district court system. There volume is too large. There is a problem with 56 possible programs. The program only has five staff attorneys for the entire state. At times there is a conflict-of-interest situation when the state is the obligator and an obligatee. To avoid the situation, they would have to go into the district court to seek a reduction. To avoid that they have set it up so they are in essence, a neutral party to the obligation process. The hearings officer is responsible for soliciting information. This process is an advantage to the state and to the individuals involved. This process will cost the individuals nothing.

The Family Support Act requires that each of the states have immediate income withholding for individuals who are required to pay child support. In 1984 the amendments required that state to have a process for income withholding based on a thirty day delinquency. In 1989 asked for immediate income withholding. Since passage of it, the federal government has come out with more specific regulations. In addition to the federal regulations, they have lived with this process for a year and a half. Part of this Bill is a retreat from the existing process. The bottom line was that the entire withholding process would pay for itself and not cost the state anything. Unfortunately, the obligees often would not fill out the applications and were not informed by their attorneys that it was necessary. There were problems with many of the judges around the state. They have slit the process into two parts. They removed the immediate withholding and put it into part 3. If the individuals do not want the state's services, they may do it on their own receipt. This Bill contains an innovative process for adapting income withholding to the enforcement of medical insurance. There are procedures in place. One of the procedures is a court remedy. They are complex and time consuming and there are not the resources to do it. There is an administrative process in place that they have had for several years. That process is a procedure of levying fines or penalties for a person who does not have the insurance as required. That process has worked somewhat but there are some individuals who would rather pay the fine than to pay the insurance. Washington State has a process that if medical insurance is available to the obligator parent at his place of employment or at his union, his employer can enroll this individual into the insurance plan and deduct the premium, if any, from the individuals' income. This has been in place in Washington for two years. A similar process has just been

introduced in Utah. There has been an attempt for a state activity for individuals who do not have insurance available to them through their employment. Washington State does have such a program available and for individuals without insurance, they are enrolled in the state plan and the premiums are then deducted from income. They have found the ultimate goal of getting more children into private medical insurance rather than into public medicaid system.

Colette Baumgardner, Democratic Women's Caucus, supports the four Bills.

Opponent's Testimony: None

Questions from the Committee:

REP. TOOLE asked if these are major provisions of child care law. Mr. McRae said yes.

Closing by the Sponsor: REP. DARKO said there had been some trouble in drafting and that is why these Bills are all being heard the second to the last day of hearings. These are important in that they conform the statutes to federal regulations. There will be financial problems if our state does not conform.

HEARING ON HB 942

REP. GARY BECK, HD 48, DEER LODGE, said HB 942 is another Bill that affect military personnel upon activation and call-up. There have been some good bills that have passed through the House concerning benefits, pay and concerning leave. HB 942 would provide for Power of Attorney and provide an immediate and effective date. This law puts into effect a form that is copied from a Minnesota law that was taken from the Uniform Laws. This has been used successfully in Minnesota. **EXHIBITS 4,5** He read from a letter from the Minnesota National Guard from a Judge Advocate Officer there. With Desert Shield there was a need to use the statutory short form Power of Attorney has simplified and sped-up the legal portion of this process. **EXHIBIT 6** This Bill would not cost the state. In Minnesota private companies printed the forms. A copy of the form could come from the statutes. This form is a good form for low income people because it gives them speedy access to the law.

Proponents' Testimony:

C. J. Lassila, Montana Army National Guard, Headquarters Company, 163 Armed Brigade, said as an attorney with the state, she frankly says this form would serve a benefit to the soldiers as well as to the members of the reserve within the state who are potential candidates for a trip to Saudi Arabia.

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

EXEC ACTION/Hearings DATE 2-21-91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR			
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI	/		
REP. DAVE BROWN			/
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER	/		
REP. THOMAS LEE	/		
REP. BRUCE MEASURE	/		
REP. CHARLOTTE MESSMORE	/		
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/		
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN	/		
REP. DIANA WYATT	/		
REP. BILL STRIZICH, CHAIRMAN	/		

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

HB# 920
921
922
923

House Judiciary COMMITTEE BILL NO. _____
 DATE 9-21-91 SPONSOR(S) Rep. DeLo

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
JOHN MCRAE DEPT OF SR'S	CHILD SUPPORT DIVISION			X
Collette Baumgardner	Demo. Women's Caucus			X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
 ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BILL STRIZICH, on February 22, 1991,
at 7:15 A.M.

ROLL CALL

Members Present:

Bill Strizich, Chairman (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
William Boharski (R)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Staff Present: John MacMaster, Legislative Council
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

EXECUTIVE ACTION ON HB 920

Motion: REP. DARKO MOVED HB 920 DO PASS.

Discussion:

REP. DARKO explained Montana will be under sanction from the Federal government if legislation to amend the statutes of limitations is not passed. The penalty will be one to six percent of AFDC money from the Federal government. The bill removes the limitations of three years from the birth of child or two years from the date of first application for services from the Department to prove paternity. The time has been extended so that paternity can be established at any time prior to the

Questions From Committee Members:

There were no questions from the Committee.

Closing by Sponsor:

Representative Darko told the Committee HB 920 is a straight-forward bill, and asked the Committee to give it favorable consideration.

EXECUTIVE ACTION ON HOUSE BILL 920

Motion:

Senator Svrcek made a motion that HB 920 BE CONCURRED IN.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Svrcek carried unanimously.

HEARING ON HOUSE BILL 922

Presentation and Opening Statement by Sponsor:

Representative Paula Darko, District 2, told the Committee HB 922 is another bill drafted to comply with federal regulations and to avoid sanctions (Exhibit #7). She explained that the bill sets up a new administrative procedure, aside from the court, to modify child support orders according to federal child support guidelines.

Proponents' Testimony:

John McCrea, Staff Attorney, Child Support Enforcement Division, SRS, said this language was derived from the Family Support Act of 1988, and requires SRS to examine all cases, upon request, for modification. He explained that it also requires the Department to seek modification on behalf of the obligee or the obligor, if necessary.

Mr. McCrea stated there are good reasons for this bill, especially with regard to orders established for small children who have now become teenagers. He said it allows for periodic update of child support obligations to meet the needs of the child, and

ROLL CALL

SENATE JUDICIARY

COMMITTEE

52nd LEGISLATIVE SESSION -- 1997

Date 13 Mar 97

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓	✗	
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

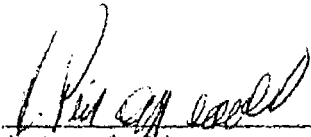
Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 13, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 920 (third reading copy -- blue), respectfully report that House Bill No. 920 be concurred in.

Signed: 

Richard Pinsoneault, Chairman

by 3-13-91
And. Coord.

SB 3-13 12:50
Sec. of Senate

Representative Foster replied that he was confused, as the intent is not to cover children not in high school.

Senator Towe asked if the Committee needed to address language with regard to pursuing course of study. Representative Foster replied he believes the language in the bill covers this.

Senator Towe commented that Judge Holmstrom kicked out a law which was not perfectly clear, and said it is important that language in this bill be made clear.

HEARING ON HOUSE BILL 920

Presentation and Opening Statement by Sponsor:

Representative Paula Darko, District 2, said HB 920 is part of a package of four bills that the Child Support Enforcement Division of the Department of Social and Rehabilitation Services (SRS), asked her to carry. She explained that one of these bills died, and one is still in the House. Representative Darko stated that the bills conform Montana statute to federal regulations in this area. She said that, under prior law, the statute of limitations was three years from date of application, but under HB 920 paternity can be brought any time with no liability for past support. Representative Darko commented that the state needs to find fathers so they can begin to pay support.

Proponents' Testimony:

John McCrea, Staff Attorney, Child Support Enforcement Division, SRS, said this issue goes back to 1975 as part of the Social Security Act. He explained that there are two possible sanctions if the state does not conform to federal law, and said Congress amended the Social Security Act in 1984, and that Montana passed legislation in 1987 paraphrasing federal language.

John McCrea advised the Committee that discussions with federal agencies in 1988 were clarified by the Family Support Act of that same year. He said that, as a result, old cases had to be worked as still fresh cases. Mr. McCrea stated the bill clarifies legislative language. He said he did research constitutional issues and found paternity stands by itself, but in Montana it has always been tied to liability with the state for past child support. Mr. McCrea told the Committee that if this liability is re-opened, there would be problems with constitutional law. He said thus the bill only bars state agencies and allows Montana to meet federal standards (Exhibit #6).

Opponents' Testimony:

There were no opponents of the bill.

child's 18th birthday. Any actions barred because of the statutes of limitations previously can now be dropped. A paternity action can be brought from the time of birth to the age of 18.

REP. MEASURE stated the bill is unfair because people who were free and clear from suit under the previous legislation will be under new rules. REP. BOHARSKI has the same question. There is no problem with what the bill attempts to do, and there is no question it is a good cause. Isn't this unconstitutional? John McRae, Department of SRS, Child Support Division, said considerable research was done on this issue which has been brought up in several states. In the state of Hawaii the issue was addressed and people in that state determined the heart of the situation was a remedial situation. Any remedial type law can retroactively correct a problem. The problem lies with imposing retroactive liability. There is a constitution prohibition against that. This prohibition is provided for in the bill. It does not revive the liability for past due support, there is no liability to the agency. The child has a private right of action to pursue the father for paternity at any time. The bill applies only to the state agency.

Vote: Motion that HB 920 do pass carried with Reps. Whalen, Measure, Brown and Wyatt voting no.

EXECUTIVE ACTION ON HB 921

Motion: REP. DARKO MOVED HB 921 DO PASS.

Discussion:

REP. DARKO said this bill requires social security number at the time birth certificates are registered to help identify birth parents, especially in enforcing support. The numbers only appear on the statistical portion, and can only be used for child support purposes. No one else will have access to the social security numbers.

Motion: REP. TOOLE moved HB 921 be amended on the first page, "except for the required by the Department rules, the social Security Numbers of the child's parents when known must be printed on the medical health part of the birth registration form. The Department may adopt a rule specifying those instances in which, for good cause shown, the social security numbers are not to be included."

Discussion:

REP. BROWN asked what does "for good cause shown" mean? What reason would there be for asking that a social security number not be included on a birth certificate? REP. TOOLE said the Department is to create rules providing direction for those exceptions. Rep. Toole hopes the exceptions will be broad.

HB BILL NO. 920

EXHIBIT #6
13 Mar
HB 920

A Bill for an Act entitled: "An Act amending the paternity statute of limitations to retroactively revive actions which were barred or could have been barred by a shorter limitation period; amending section 40-6-108, MCA."

COMMITTEE TESTIMONY

By: John M. McRae
Staff Attorney
Child Support Enforcement Division
Department of SRS

Date: 3/13/91

Before the SENATE JUDICIAL Committee.

In 1987 the legislature amended the paternity statute of limitations to permit the Department to determine paternity "at any time" before a child's 18th birthday. This proposed Bill amends the same statute to clarify that use of the phrase "at any time" is to have retroactive application. That is, to show legislative intent to revive paternity actions barred by earlier limitation periods.

By way of background, In 1975 Congress established in Title IV-D of the Social Security Act. That Act requires the various states to have and operate child support enforcement programs. In 1984, to improve the effectiveness and efficiency of the state programs, Congress enacted Pubic Law 98-378, better known as the Child Support Enforcement Amendments. The federal Amendments

Ex. 6
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mandated the States to adopt and use various techniques, and enforcement mechanisms. In addition, the federal Amendments required States to be able to bring paternity actions "at any time" before a child's 18th birthday.

Before amendment of the statute of limitations in 1987, there was a 2 year limitations period. The period began with the date of first application for Department services. After the 2 year period, the statutory bar prevented any further action on the case. Although the limitation statute applied to any child 18 years and under, it did not meet federal requirements. Federal auditors held that the statute did not permit determination of paternity "at any time" before a child's 18th birthday. A still earlier version of the statute of limitations barred actions 3 years after the child was born. Under both of those early limitation periods, the Department closed hundreds of cases because of the bar.

After the 1987 amendment, a controversy arose over its intent. An Attorney General's opinion held that the 1987 amendment did not revive actions barred under earlier limitation periods. Because of this opinion, federal auditors contended that Montana was not in compliance with the mandates of the 1984 Amendments. The State's position was that federal law did not expressly or impliedly require the State to revive barred actions. Other States had the same problem with federal auditors.

Congress clarified the issue of retroactivity with passage of the Family Support Act of 1988, P.L. 100-485. Section 111(e) of the FSA clarified that the 1984 Amendments did intend to revive all the barred paternity actions. The FSA made this clarification

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retroactive back to the date of the 1984 Amendments. Because of the FSA clarification, Montana is now in non-compliance with federal requirements and federal sanctions are a distinct hazard. See attached letter. As a result, the Department now proposes to amend §40-6-108, MCA to include an expression of legislative intent which corresponds with the federal requirement. That is, to revive all of the barred and closed paternity actions.

Montana needs this law to remain in compliance with federal law. Compliance is a prerequisite for federal reimbursement of the costs of operating the state's child support enforcement programs. If the legislature does not adopt this bill, the federal government could impose sanctions, and disallow federal reimbursement. The current federal reimbursement rate is 66%. For the last quarter, federal reimbursement amounted to about \$470,000.00.

After revival of a barred paternity action, the father may coincidentally become liable for child support. That is, a bar on the paternity actions coincidentally also bars an action for support. Removal of the paternity bar could therefore in some cases also revive the father's support liability. If this happens, there could be a violation of Article XIII, Section 1(3), of the Montana Constitution. That Section provides "[t]he legislature shall pass no law retrospective in its operation which imposes on the people a new liability in respect to transactions or consideration already passed." Because of Article XIII, if the proposed bill does revive a paternity action, the proposed bill will not coincidentally revive the father's liability for support.

Please note that the entire question of barred paternity

Ex. 6

3-13-91

HB 920

actions and revival of support liability applies only to the Department. Under State v. Wilson, ___ Mont. ___, 631 P.2d 1273 (1981), the earlier statute of limitation periods (those periods of less than 18 years) did not apply to the child. Therefore, because the bar did not apply to the child, the bar never prevented the child from pursuing the father for support. In short, the Department may not hold the father responsible for support. However, after the Department has established paternity, the child can independently hold the father liable for support.

By these reasons and considerations, the Department urges the committee to pass this Bill, thank you.

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

EXEC. ACTION & HEARING DATE 2-22-91

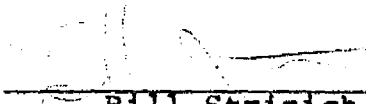
NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI	/		
REP. DAVE BROWN	/		
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER	/		
REP. THOMAS LEE	/		
REP. BRUCE MEASURE	/		
REP. CHARLOTTE MESSMORE	/		
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/		
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN	/		
REP. DIANA WYATT	/		
REP. BILL STRIZICH, CHAIRMAN	/		

HOUSE STANDING COMMITTEE REPORT

February 22, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 920 (first reading copy -- white) do pass.

Signed: 

Bill Strizich, Chairman



DEPARTMENT OF HEALTH & HUMAN SERVICES

HB 920
Copies
Finney
John M
Office of Child Support Enforcement

18 DEC 1990

Julia E. Robinson
Director
Department of Social and
Rehabilitation Services
P.O. Box 4210
Helena, Montana 59604

RECEIVED
DEC 29 1990
CHILD SUPPORT
ENFORCEMENT-MONTANA

Region VIII
Federal Office Building
1961 Stout St.
Denver CO 80294

RECEIVED
DEC 24 1990
CHILD SUPPORT
ENFORCEMENT — HELEN

Dear Ms. Robinson:

Enclosed is the State's copy of OCSE-21-U4, Transmittal Number 89-03. Interim approval has been given to the portion of this Transmittal related to genetic testing, which we have designated as Attachment 2.12-5A. Based on information available at this time, this office has concluded that your State is in conformance with the requirements contained in section 111(b) of the Family Support Act of 1988. Per our conversation with Montana's State IV-D Administrator, Jon Meredith, on November 29, 1990, we have separated the provisions included on the original pre-print page in order to provide interim approval for the genetic testing portion of this Transmittal.

As stated in our letter dated December 8, 1989, new plan pre-print pages related to the Family Support Act of 1988 would not be issued until final regulations governing provisions of section 111(b), mandatory genetic testing, and 111(e), paternity establishment to age 18, retroactive to August 16, 1984, are released. In the interim, the State was directed to submit the appropriate current pre-print page attesting to compliance with these two Federal requirements of the Family Support Act. In our subsequent letter, dated April 3, 1990, we stated that we could not recommend approval of TN 89-03 because of a current Montana Attorney General opinion that was clearly inconsistent with the requirements of Section 111(e) of the Family support Act of 1988. However, we agreed to defer our action on Plan Amendment 89-03 in light of the State's agreement to obtain a revision to the State law regarding paternity during Montana's 1991 legislative session.

Comments regarding Montana's recent draft legislation related to Paternity Statute of Limitations were provided in our letter dated October 24, 1990. In this letter, we stated that if the proposed amendment to § 40-6-108(3)(b) is enacted, section 111(e) of the Family Support Act of 1988 would be satisfied. In addition we agreed that this amendment would overrule the 1988 Montana Attorney General opinion that the 1987 extension of the Montana statute of limitations did not revive any paternity actions brought by the State IV-D agency, but were previously barred by operation of the 1985 two-year statute of limitations.

Ex. 6
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HB 920

However, if State legislation is not enacted during the next legislative session to comply with the statute of limitations provision (section 111(e) of the Family Support Act of 1988), we would have to recommend disapproval of the State plan. A determination that a State IV-D plan is disapproved will result in immediate suspension of all Federal payments for the State's child support enforcement program, and such payments will continue to be withheld until the State IV-D plan can be approved by OCSE.

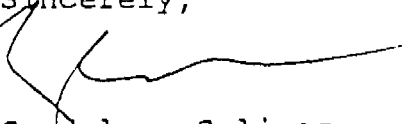
As provided in program instructions issued in OCSE-AT-86-21, prior to issuance of a final determination to disapprove your State plan, you have the option to request a hearing under procedures at 45 CFR Part 213. Election of administrative review prior to the final decision to approve or disapprove the State IV-D plan will constitute a waiver of reconsideration hearing rights contained in 45 CFR 301.14. If a State declines the opportunity for a pre-decision review, a determination will be made whether the IV-D plan must be disapproved for failure to conform with the requirements of Section 454 of the Social Security Act. If the State is dissatisfied with the Director's decision, reconsideration may be requested pursuant to 45 CFR 301.14. Withholding of Federal payments cannot be stayed pending reconsideration.

Revised State plan pre-print pages will be issued when final regulations are published for State use in certifying compliance with requirements of the Family Support Act of 1988 and implementing regulations. Interim approval will be superseded by approval or disapproval of failure to submit plan amendments certifying compliance with all Federal requirements.

The effective date of Transmittal 89-03 related to genetic testing only is October 1, 1989. This date is in accordance with 45 CFR 301.13(g), which prescribes that the effective date cannot be earlier than the first day of the quarter in which the State plan was submitted.

If you have any questions, please contact Doreen McNicholas at (303) 844-5594.

Sincerely,



Guadalupe Salinas
Regional Representative
OCSE/FSA

Enclosures

DATE 13 March 21

COMMITTEE ON

Senate Judiciary Committee

VISITORS' REGISTER H.B.

284	920	581
675	922	286

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